

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FRANCISCO PERALTA, 96-A-6821

Plaintiff,

vs.

DECISION AND ORDER
04-CV-6559

SUPERINTENDENT EDWARD DONNELLY,

Defendant.

Siragusa, J. In the Court's Decision and Order (# 13), entered on August 11, 2006, the Court deferred decision on defendant's motion to dismiss (#7), and referred the case to U. S. Magistrate Judge Marian W. Payson for supervision of discovery, in compliance with District Court Judge William M. Skretny's January 24, 2005 Decision and Order (#3), permitting plaintiff to amend his complaint to identify the "John Doe" defendant (#3). In its Decision and Order (#13), however, this Court warned plaintiff that failing identification of the John Doe defendant's identity within a reasonable time, defendant could move this Court to issue a decision on the motion to dismiss.

On December 11, 2006, Magistrate Judge Payson issued a discovery scheduling order (#16) setting a discovery closing date of January 31, 2007. To present, plaintiff has failed to identify the John Doe defendant's true identity, despite being given more than a reasonable opportunity to do so. The Court is now in receipt of a letter dated February 15, 2007, from defense counsel, with a copy having been sent to plaintiff, requesting the Court to decide the motion to dismiss the only named defendant, Superintendent Edward

Donnelly.

For the reasons stated in its prior decision and order (# 13), the Court hereby grants defendant Donnelly's motion (# 7) to dismiss. The Clerk is directed to enter judgment for defendant.

IT IS SO ORDERED.

DATED: Rochester, New York
February 20, 2007

ENTER.

s/Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge